

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

Plaintiff,

v.

Air Products and Chemicals, Inc., Alcoa Inc.,
American Airlines, Inc., BASF Catalysts LLC,
Beazer East, Inc., Bristol-Myers Squibb Company,
Chevron Environmental Management Company,
for itself and on behalf of Chevron U.S.A., Inc. and
Kewanee Industries, Inc. (for Harshaw Chemical
Company), Cornell-Dubilier Electronics, Inc., The
Egyptian Lacquer Manufacturing Co., Foster
Wheeler LLC, Kinder Morgan Liquid Terminals,
LLC (for and/or in place of GATX Corp.),
Mallinckrodt Baker, Inc. and Mallinckrodt Inc. as
successor to Mallinckrodt Chemical Inc./J.T.
Maxus Energy Corp., (o/b/o Occidental Chemical
Corp. as successor to Diamond Shamrock
Chemicals Co.), Rutgers University,
Stoney-Mueller, Inc., Mack Trucks, Inc., and
Warner Lambert Co.,

Defendants.

CIVIL ACTION NO.

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9607, as amended, for recovery of response costs incurred in connection with the Chemsol, Inc. Superfund Site ("Site") located in Piscataway, Middlesex County, New Jersey.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b).

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c), and Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), because the releases or threatened releases of hazardous substances that gave rise to this claim occurred in this district and because the Site is located in this district.

DEFENDANTS

4. The defendants in this action, or their agents, arranged for the disposal of hazardous substances at the Site during the relevant time period.

5. Defendant, Air Products and Chemicals, Inc., is a Delaware corporation with its principal place of business at 7201 Hamilton Boulevard, Allentown, PA.

6. Defendant, Alcoa Inc., is a Pennsylvania corporation with its principal place of business at 1501 Alcoa Building, Pittsburgh, PA .

7. Defendant, American Airlines, Inc., is a Delaware corporation with its principal place of business at 4333 Amon Carter Boulevard, Fort Worth, TX.

8. Defendant, BASF Catalysts, LLC, is a Delaware limited liability company with its principal place of business at 100 Campus Drive, Florham Park, NJ.

9. Defendant, Beazer East, Inc., is a Delaware corporation with its principal place of business at One Oxford Centre, Suite 3000, Pittsburgh, PA.
10. Defendant, Bristol-Myers Squibb Co., is a Delaware corporation with its principal place of business at 345 Park Avenue, New York, NY.
11. Defendant, Chevron Environmental Management Company, is a California corporation with its principal place of business at 6001 Bollinger Canyon Road, San Ramon, CA. Chevron Environmental Management Company is a defendant in this action for itself as well as on behalf of Chevron U.S.A., Inc. and Kewanee Industries, Inc., for Harshaw Chemical Company.
12. Defendant, Cornell-Dubilier Electronics, Inc., is a Delaware corporation with its principal place of business at 140 Technology Place, Liberty, SC.
13. Defendant, The Egyptian Lacquer Manufacturing Co., is a New Jersey corporation with its principal place of business at 113 Fort Granger Drive, Franklin, TN.
14. Defendant, Foster Wheeler LLC, is a New Jersey limited liability company with its principal place of business at Perryville Corporate Park, Clinton, NJ.
15. Defendant, Kinder Morgan Liquid Terminals, LLC, is a Delaware limited liability company with its principal place of business at 500 Dallas Street, Suite 1000, Houston, TX. Kinder Morgan Liquid Terminals, LLC is a defendant for and/or in place of GATX Corporation.
16. Defendant, Mallinckrodt Baker, Inc., is a New Jersey corporation with its principal place of business at 222 Red School Lane, Phillipsburg, NJ. Mallinckrodt Baker, Inc. is a defendant in this action as the successor to Mallinckrodt Chemical Inc./J.T. Maxus Energy Corp., (o/b/o Occidental Chemical Corp. as successor to Diamond Shamrock Chemicals Co.).
17. Defendant, Mallinckrodt, Inc., is a Delaware corporation with its principal place of business at 675 McDonnell Boulevard, Hazelwood, MO. Mallinckrodt, Inc. is a defendant in this

action as the successor to Mallinckrodt Chemical Inc./J.T. Maxus Energy Corp., (o/b/o Occidental Chemical Corp. as successor to Diamond Shamrock Chemicals Co.).

18. Defendant, Rutgers University, is a part of the State University of New Jersey and has a principal place of business at 57 US Highway 1, New Brunswick, NJ.

19. Defendant, Stoney Mueller, Inc., is a New Jersey corporation. Its principal place of business is not known.

20. Defendant, Mack Trucks, Inc., is a Pennsylvania corporation with its principal place of business at 2100 Mack Boulevard, Allentown, PA.

21. Defendant, Warner Lambert Co., is a Delaware limited liability company with its principal place of business at 235 E 42nd Street, New York, NY.

GENERAL ALLEGATIONS

22. The Site encompasses a 40-acre tract of land, located at the end of Fleming Street, Piscataway, Middlesex County, New Jersey. The Site comprises two areas: an undeveloped Parcel known as Lot 1A and a cleared area referred to as Lot 1B. Two small intermittent streams (Stream 1A and Stream 1B) and a small trench, known as the Northern Ditch, drain northward across the Site into a marshy wetland area located near the northeastern property boundary.

23. Chemsol, Inc. operated a solvent recovery and waste reprocessing facility at the Site from 1951 through approximately 1965. Historically, Chemsol experienced numerous accidents, fires and explosions resulting from the storage, use or processing of flammable materials at the Site. Police reports document numerous accidents.

24. In October 1964, Piscataway Township ordered Chemsol to temporarily cease operations, which it did sometime in 1965. The operations moved from the Site in 1966.

25. In September 1983, the Site was placed on the National Priorities List (“NPL”) making it eligible for federal funds for investigation of the extent of contamination and for cleanup activities. The NPL is a list of sites nationwide that present the greatest threat to human health and the environment.
26. From 1983 to 1990, the New Jersey Department of Environmental Protection (“NJDEP”) directed the property owner at that time, Tang Realty, Inc., to perform Site investigations related to groundwater and soil contamination.
27. Sampling results from the monitoring wells indicated that groundwater was contaminated with various volatile organic compounds (“VOCs”) including trichloroethylene, chloroform, chloroethane, toluene, carbon tetrachloride and methylene chloride.
28. Sampling and analyses of the soils revealed the presence of polychlorinated biphenyls (“PCBs”) and other organic compounds.
29. On September 20, 1991, EPA selected an interim remedy (“Interim Remedy”) for the Site in a Record of Decision (“ROD”). The objective of this interim remedy was to restrict the migration of contaminated groundwater until a more comprehensive Site-wide remedy could be performed.
30. Beginning in 1992, certain potentially responsible parties (“PRPs”) constructed the Interim Remedy, including a groundwater treatment plant, which was completed in June, 1994. The results of monthly monitoring indicate that the Interim Remedy has been effective in restricting the migration of highly contaminated groundwater from the Site.
31. EPA selected the remedial action to be implemented at the Site in a Record of Decision, executed on September 18, 1998. The soil remedy provides for excavation and off-Site disposal of approximately 18,500 cubic yards of contaminated soils, followed by backfilling with clean

fill and topsoil and seeding. The groundwater remedy includes installation of additional extraction wells, supplementing Well C-1, to contain the contaminated groundwater on the Site. In addition, the existing groundwater treatment system will remain in place.

32. On January 26, 2000, this Court entered a Consent Decree in which a number of PRPs agreed to perform the remedy and to pay \$3,042,205.55 in reimbursement of past response costs incurred by EPA.

33. On April 22, 2004, this Court entered a Consent Decree with the owners of the Site, Marvin Mahan, Tang Realty, Inc., and Transtech Industries, Inc.

34. EPA has incurred "response" costs within the meaning of Section 101(25), 42 U.S.C. § 9601(25), in connection with the release or threatened release of hazardous substances at the Site, which have not been reimbursed.

35. All of these costs were incurred in a manner not inconsistent with the National Contingency Plan, promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605 and codified at 40 C.F.R. Part 300.

36. Each of the Defendants in this action are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

37. "Hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were "disposed" of at the Site, as defined in Section 101(29), 42 U.S.C. § 9601(29).

38. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

39. There were and are "releases" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), as well as the threat of continuing releases, of hazardous substances into the environment at and from the Site.

CLAIM FOR RELIEF

40. The allegations set forth in paragraphs 1 through 39 are realleged and incorporated herein by reference.

41. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a . . . facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, . . . of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . ,
- (4) . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States . . . not inconsistent with the national contingency plan

42. Defendants are liable to the United States for all costs of removal or remedial action at the Site, as well as interest on these costs, pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), and for the expenses the United States incurs in seeking to recover these costs, pursuant to CERCLA Section 101(25), 42 U.S.C. § 9601(25).

SECOND CLAIM FOR RELIEF

43. Section 106(a) of CERCLA, 42 U.S.C. §, 9606(a) provides that:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

44. By Executive Order 12580 of January 23, 1987, the President's functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated to the Administrator of EPA.

45. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare of the environment because of an actual or threatened release of a hazardous substance from the Chemsol facility.

46. Defendants are each liable for the injunctive relief to which the United States is entitled under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

- a. Enter a declaratory judgment that Defendants are liable for the United States' past and future response costs incurred in connection with the Site.
- b. Order the Defendants to pay the United States its past and future response costs in connection with the Site.
- c. Order the Defendants to abate the threat posed by the release or threatened release of hazardous substances at the Site by performing the remedy selected in the ROD; and
- d. Grant such other and further relief as may be just and proper.

Respectfully submitted,

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